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**Cannot Go Behind Bailiff Act Record.**

**LOCAL PRACTICE IS CONDEMNED**

**Humphreys Says Jury Drawing by Lot Was Abrogated by Organic Act.**

Judge Humphreys yesterday denied the motion attacking the panel of the grand jury which indicted Wm. K. Rathbun, upholding by his ruling the bailiff law as passed by the last legislature.

Attorney Robertson attacked the present method of drawing jurors on three different grounds, that the law was not properly passed by the last legislature; that under the civil law, the common law of England is to be the law in the Hawaiian Islands, and as no person can be subject to criminal proceeding except under that law, and the common law does not authorize the bailiff to summon a jury, the panel of the grand jury in this case was illegal. For the third ground he claimed that the proceedings of the Hawaiian legislature which passed the law were not in the English language as is provided by Section 46 of the Organic Act, and consequently such action is illegal. The latter point was not pressed, and no argument was had on it.

High Sheriff Brown was first put on the stand to show that he had not been called upon to serve the venire, but this point the court stated would be admitted, and he took judicial notice that such service had been made by a bailiff of the court.

Edgar Cayless, clerk of the Senate, was then put on the stand to testify to the minutes of that body's proceedings in relation to the bailiff act. The journal of the Senate was offered in evidence and objected to by Deputy Attorney General Cathcart, which objection was sustained.

"I would like to argue on that point," said Mr. Robertson.

"It is wholly unnecessary," replied the court; "argument for two days wouldn't convince me of its admissibility. The Supreme Court of the United States has decided that question, and I do not intend to overrule that court."

Mr. Cathcart asked Mr. Robertson to admit that the law properly attested to by the officers of the Legislature and signed by the Governor was now in the hands of the Secretary of the Territory. This, defendant's counsel agreed to admit, and upon that admission the court then practically decided the question.

"That much being admitted," said the court, "I decline to go behind the official act which it is admitted was duly signed by the respective officers of the Senate and House of Representatives and approved by the Governor, and deposited with the Secretary of the Territory, who is the legal custodian of the laws."

"I hold that the enrolled act in itself is, in the language of the Supreme Court of the United States, complete and unimpeachable."

Solomon Meheula, clerk of the House, was then put on the stand and his journal was put in evidence and ruled out by the court, upon the same ground as given above.

Mr. Robertson then argued on the second phase of his attack. "This act provides," said he, "that the bailiffs have the same authority as the sheriff. I contend that the English law expressly excepts criminal law proceeding, and the common law power of the sheriff is the serving of jurors, and it is the assumption that the sheriff has such power here. This act gave the bailiff the same power as the sheriff, and is unsound because by virtue of the act, the sheriff cannot in this Territory exercise the same power of the sheriff in England in summoning juries. If the law denies to the sheriff such power it also denies it to the bailiff. It was the intention of Congress to continue in force the old law, which provided for the drawing of juries by lot, excepting such parts as referred to the distinction between foreigner and Hawaiian. The Hawaiian statute which provides for drawing the jury by lot under the supervision of the court and clerk is still in force in this Territory, and that point is, of itself, I contend, sufficient to warrant the granting of this motion."

Mr. Cathcart replied that the words "criminal proceeding" if taken in its usual sense as contended by defendant would have practically prohibited all criminal procedure in the Territory during the transition period. "The organic act," he continued, "repealed the former procedure and substituted indictments by grand jury for infamous crimes. There is no power here to change that."

"If the contention of Mr. Robertson is correct," interrupted the court, "the sheriff is above authority, and could murder and commit crime with impunity."

Mr. Robertson replied that any deputies of the sheriff could serve him with a notice.

"They are appointed by the sheriff, and it would be just the same as if he were doing it," returned the court. "I submit," said Mr. Robertson, "that the jury is drawn by the clerk and the summoning of the jury is only a mechanical duty on the part of the sheriff. He has nothing to do with drawing of juries. We should not lightly abandon the law which requires the drawing of jurors by lot, and not follow the present method, which has been everywhere severely condemned by eminent jurists. It is condemned in every textbook, and I say that the court should only allow it as a last resort. I submit that there is ample machinery in this Territory for the drawing of juries by lot, and it should not be lightly abandoned."

"When it became necessary to draw the first grand jury in this Territory," said the court in passing upon the motion, "I was very much perplexed as to the proper method to pursue, believing that Congress in repealing certain portions of the jury laws, had emasculated the whole. After consultation with the chief justice and Judge Little, we came to the conclusion that we could not draw a grand jury under the old law, and when the question of bringing the jury into court arose, it became necessary to resort to the common law power."

The court then quoted from the decision of the Hawaiian Supreme Court in the Edwards case in which it was held that the courts were invested with the power to order the attendance of jurors. Continuing, he said, "If the Hawaiian jury statutes are still in force, as it is contended, then the court would be without jurisdiction, but believing as I do, and having the concurrence of the other judges, I must hold that this law is operative, otherwise it would be equivalent to holding that we could have no trial or grand juries in this court. The challenge will be denied."

Mr. Robertson noted exceptions and his intention to appeal. The case was set down for trial for November 27.

### TAKES A VACATION.

**Mrs. Brown, Secretary of Y. W. C. A. Will Recupere on Hawaii.**

The board of directors of the Young Women's Christian Association has granted a three weeks' vacation to Mrs. H. C. Brown, the association secretary, commencing today. Mrs. Brown leaves for Mokuia today and will return the first of next week to take the Kinau for Hawaii where she will spend the rest of her vacation.

Mrs. Brown has been untiring in her work during the past year and has wrought many changes in the routine and special work, and the board readily granted her a respite from her labors before the approaching holiday season begins. During her absence the association affairs will be looked after by the board members, each devoting a day to supervising.

The regular classes will go on, but nothing in the line of specialties will be carried out until Mrs. Brown's return.



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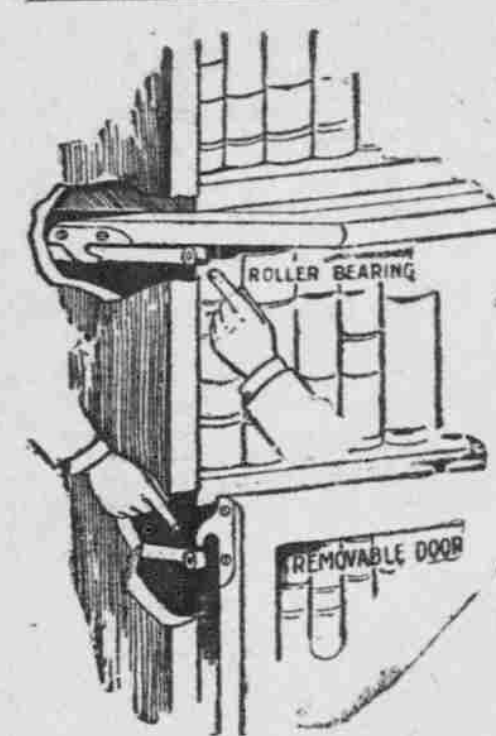
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